a charge of assisting in the management of a public lottery. I interpret assisting in the carrying on as some overt act directly connected with the promotion of the lottery; whereas assisting in the management might extend to the printer who sells the paper or the workman who maintains the premises. Assisting in the management of a place *kept or used as a common gaming house* might cover the instances I have illustrated, but I think this difference I have tried to demonstrate has been appreciated by the Legislature, and so the law has remained unamended, for amended or challenged one would expect to find it in consequence of the reported cases.

I do not think I am impelled to follow the reported cases of *R. v. Chong Ah Pye*[1] and *Lee Seow Kuan v. R.*[2]. Both are Straits (Singapore) cases but the Enactment is the same. In each is contained expressions intimating that the charge of assisting in the management of a public lottery is one not within the Enactment. I am not inclined to differ, indeed with respect I agree.

Again with respect I follow O'Malley C.J. in *Chong Ah Pye's*[1] *case* when he said that in his opinion there was a proper charge which could be preferred on the facts proved. Reading the record in the appeal now before this Court there undoubtedly appears to be facts on which a proper charge could be preferred.

But I regret I have to differ with the learned Chief Justice on his ultimate order of retrial. I agree with Mr. Rintoul for the appellant that what has happened is in effect a nullity. The appellant faced trial on a charge not known to law; had it been a legitimate charge, though the facts proved another offence, I would have considered altering the charge, although I am doubtful if it could be done. In the Indian Code of Criminal Procedure it may be done by virtue of section 423(d) (*Sohoni*, 14th Edn. page 805, para. 62), but that sub-section does not appear in the Criminal Procedure Code of this country.

Nor can I order re-trial, for the charge in the Court below being one without the law, it follows that the proceedings were a nullity, and while the re-trial of a trial may in appropriate circumstances be ordered, the re-trial of a nullity is an impossibility.

On the opposite side Mr. Rintoul conceded that in the event of further proceedings a plea of *autrefois convict* would be unavailing, for the appellant has not been in peril.

I therefore rule that the proceedings in the Court below were a nullity. The conviction and sentence, including the forfeitures, are quashed, and I direct that they should be expunged from the record of the Court below.

In order to afford opportunity for further proceedings the exhibits will remain in Court for a period of 14 days.

Conviction quashed.

POH BOON PIN v. PUBLIC PROSECUTOR.

[A. Cr. J. (Hill J.) September 18, 1948]

[Alor Star — Criminal Appeal No. 68 of 1948]

Sanitary Boards Enactment (Kedah), s. 4 — Sanitary Boards (Amendment) Enactment, No. 7 of 1358, — Whether bye-law is ultra vires.

In this case the appellant had been convicted of an offence under Bye-laws relating to building made under the Sanitary Boards Enactment as amended by the Sanitary Boards (Amendment) Enactment. On appeal it was argued that Bye-law 13 was *ultra vires*.

Held: (1) the Sanitary Boards Enactment as amended by the Sanitary Boards (Amendment) Enactment gave the Sanitary Board power *inter alia* to prohibit the erection of an unsightly building, but did not empower the Board to order the demolition of a building already erected no matter how unsuitable it might be; (2) Bye-law 13 in so far as it permitted the Sanitary Board to order any building to be demolished by reason of its being unsuitable to the locality, was *ultra vires*.

Cases referred to :—

(1) *Wong Poh v. Public Prosecutor* (1949) M.L.J. 1.

(2) *Low Leong Huat v. Public Prosecutor* (1917), 2 F.M.S.L.R. 162.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Cheng Ean for the appellant.

C. V. Boyle (D. P. P.) for the respondent.

Hill J. : — The appellant was on 3rd July, 1948, convicted in the Magistrate's Court, Alor Star, on the following charge :—

That you are in possession of an attap shed at Jalan Baru, Alor Star, constructed from jungle rollers for pillars, attap roof, earth ground floor and size is about 50 x 80 feet, being of such a nature as to be unsuitable to the locality. Thereby you have committed an offence under s. 13 By-Laws relating to building, punishable under the same section.

He was fined $50 in default one month's rigorous imprisonment and ordered to demolish the building.

From this conviction, sentence and order he has appealed. There are two grounds of appeal, that bye-law 13 is *ultra vires* and alternatively that the trial Magistrate should not have been satisfied with the propriety of the order of the Town Board.

I will deal with the first ground. Bye-law 13 reads as follows :—

If in the opinion of the Sanitary Board any building is of a nature unsuitable to the locality or is in a dangerous condition the Board may cause a notice to be served upon the owner calling upon him within a reasonable time to demolish or repair such building as the case shall require. If such notice be not complied with the Board may proceed against the owner in the Court. The Court if satisfied as to the propriety of the Order of the Board may punish the owner of the building by fine not exceeding $200 and also may order that the destruction or repair of the building be executed by the Board at the expense of the owner.

This bye-law is enacted under authority of Enactactment No. 106 (Sanitary Boards) as amended by the Sanitary Boards (amendment) Enactment, No. 7 of 1358. Section 4 is the relevant section. By this section the powers conferred on a Sanitary Board in respect of buildings and building operations may be exercised in accordance with the provisions of sub-sections (a), (j), (n), and (q).

These sub-sections are as follows :—

(a) The regulation and control of buildings and building operations, and in the discretion of the Board the prohibition of the erection of a building of a particular class, design or appearance in particular districts, localities or streets or portions of streets within a Sanitary Board area.

(j) The prevention and abatement of nuisances and the regulation and if necessary the prohibition within a Sanitary Board area of dangerous or unhealthy or offensive trades or occupations, and the prescribing of the limits within a Sanitary Board area in which such trades or occupations may be carried on.

(n) The repair or removal of ruinous or dangerous buildings and the removal of occupants therefrom.

(q) All other matters whether similar or not to those above mentioned connected with the conservation and the improvement of the Sanitary Board area.

By sub-section (a) the Board may prohibit the erection of a building of a particular class, design or appearance, etc.; by sub-section (j) power is given to prevent and abate nuisances; by sub-section (n) the Board is empowered to order the repair or removal of dangerous buildings and by sub-section (q) to deal with all other matters connected with the conservation and the improvement of the Sanitary Board area.

In this case the reasons for the Board's order to demolish were that the building was unsuitable to the locality and unsightly. By sub-section (a) set out above the Board could prohibit the erection of an unsightly building, but that sub-section does not empower the Board to order the demolition of a building already erected no matter how unsuitable it may be. Unsightliness and unsuitability are not nuisances and sub-section (n) is only concerned with the repair or removal of dangerous buildings. It seems clear therefore that in so far as sub-sections (a), (j) and (n) are concerned the Board has no power to order the demolition of any building merely because it is unsuitable to the locality. It remains therefore to be considered whether such power is conferred on the Board by sub-section (q).

In *Wong Poh v. Public Prosecution*[1] cited by the Magistrate in his judgment, mere unsuitability was not the reason for the order of demolition, the Board considered the shed occupied by the appellant in that case to be dangerous and for the reasons given above the order of demolition was held to be *intra vires*.

What does sub-section (q) authorise? If by this section it was meant that the Board was given the very widest powers and, if the words "similar or not" indicated that *ejusdem generis* does not apply and that anything whatever connected with the conservation and improvement of the area under the Board's control could be dealt with by the Board, the necessity for all the other sub-sections in section 4 is not apparent.

I agree with the opinion expressed by Farrer Manby J.C. in the case cited by Mr. Lim Cheng Ean of *Low Leong Huat v. Public Prosecutor*[2]. I consider that the words "similar or not" must be read with the section as a whole and in this case more especially with sub-sections (a), (j) and (n).

It follows therefore that I can find no authority for that part of Bye-law 13 by which the Board assumes the power to order the demolition of a building which in its opinion is of a nature unsuitable to the locality, and I hold that that portion of the bye-law is *ultra vires*. That being so I need not consider the other points raised.

The appeal is therefore allowed and the conviction, sentence and order of the lower Court set aside.

Appeal allowed.